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7 Attorney for Plaintiffs

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF MONTANA**
10 **MISSOULA DIVISION**

11 KATHLEEN ADAMS, individually, as) CV 08-42-M-DWM-JCL
12 Personal Representative of the Estate of Jay)
13 Thomas Allen; and as Guardian of Jaylynne)
14 Allen, T'Jay Allen, and Lane Allen; JOHN)
15 ALLEN; DIANA ALLEN; CHRISTA) **COMPLAINT**
16 ALLEN; JOHN C. ALLEN; and TODD)
17 ALLEN,)

18 Plaintiffs,

19 vs.

20 UNITED STATES OF AMERICA,

21 Defendant.

22 Plaintiffs allege as follows:

- 23 1. Plaintiff Kathleen Adams is the surviving spouse of Jay Thomas Allen, and the natural
24 mother of their minor children Jaylynne Allen, T'Jay Allen, and Lane Allen. Ms. Adams
25 is the duly appointed, qualified, and acting personal representative of the estate of Jay
26 Thomas Allen. Ms. Adams is a citizen of the State of Montana and a resident of Blaine
27 County, Montana.

- 1 2. Plaintiff Kathleen Adams brings this action on behalf of herself, on behalf of the estate of
2 Jay Thomas Allen, on behalf of her children, and on behalf of the heirs of the Estate of
3 Jay Thomas Allen, all of whom have sustained lawful damages as a result of Jay Thomas
4 Allen's injuries and death.
- 5 3. Plaintiff John Allen, the surviving father of Jay Thomas Allen, is a citizen of the State of
6 Montana and a resident of Blaine County, Montana.
- 7 4. Plaintiff Diana Allen, the surviving mother of Jay Thomas Allen, is a citizen of the State
8 of Montana and a resident of Blaine County, Montana.
- 9 5. Plaintiffs Christa Allen, John C. Allen, and Todd Allen, surviving siblings of Jay Thomas
10 Allen, are citizens of the State of Montana and residents of Blaine County, Montana.
- 11 6. This Court has jurisdiction over this cause of action pursuant to the Federal Tort Claims
12 Act, 28 U.S.C. 2671, *et seq.*, because the claim arises from conduct of federal
13 government agents and Plaintiffs have exhausted administrative remedies.
- 14 7. This Court has exclusive jurisdiction over tort claims brought against the United States
15 pursuant to 28 U.S.C. § 1346(b).
- 16 8. Plaintiffs filed a Federal Tort Claim Act claim on June 15, 2007. The government has not
17 acted on the claim, therefore Plaintiffs' claims are now ripe for adjudication.
- 18 9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(e) and 1402(b). Venue also
19 is proper in this division under L.R. 1.11, referencing MCA § 25-2-122, because the
20 United States is the named Defendant. *See Rotzler v. United States*, CV 07-115-M-DWM,
21 slip op. at 4-7 (D. Mont. Jan. 24, 2008).
- 22 10. On June 14, 2005 Jay Thomas Allen, an enrolled Assiniboiné, returned home from a
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1 sweat lodge ceremony at about 10:00 p.m. He was feverish and vomited and had a
2 restless night.

3 11. On June 15, 2005, the next morning, Jay continued to be feverish and irritable. He
4 vomited again. Then around noon he collapsed while playing basketball at his home and
5 lost strength and control in the right side of his body.

6
7 12. Jay's spouse Kathleen took him to the Indian Health Service clinic in Harlem, Montana,
8 where she and another relative carried him into the clinic by supporting him under each
9 arm at about 1:00 p.m. Jay was able to speak upon arrival at the IHS clinic, but eventually
10 lost the ability to speak, and he became incontinent.

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12 13. Health care providers at the Harlem IHS clinic suspected Jay was intoxicated and did not
13 provide immediate care.

14 14. Health care providers at the Harlem IHS clinic only began to assess Jay's condition at
15 about 1:50 p.m. after repeated entreaties.

16 15. Health care providers at the Harlem IHS clinic eventually determined that Jay had
17 experienced an intracerebral hemorrhage, and arranged for emergency transport to
18 Billings Deaconess at about 6:00 p.m.

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20 16. Jay was transported to Billings and then redirected to Great Falls Benefis Healthcare,
21 where he arrived at about 8:00 p.m.

22 17. Health care providers at Benefis eventually determined that Jay had a stroke caused by a
23 blood clot.

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25 18. On June 25, 2005 Jay was transferred to the inpatient rehabilitation facility at Benefis,
26 where he continued until July 28, 2005.

- 1 19. Through the remainder of 2005 and until April 26, 2006 Jay continued outpatient and
2 self-directed rehabilitation.
- 3 20. On April 26, 2006 Jay appeared to experience a seizure of some type, so Kathleen called
4 an ambulance and Jay was transported to the IHS clinic in Harlem where he arrived at
5 about 1:00 p.m. An electrocardiogram returned abnormal. IHS health care providers
6 believed Jay was experiencing a stroke, and at about 3:10 p.m. directed Kathleen to take
7 him in a private vehicle to Northern Montana Hospital in Havre to have a CT scan
8 performed on his head.
- 9
10 21. Kathleen took Jay to Havre for the CT scan and returned to the IHS clinic at about 5:20
11 p.m. whereupon health care providers at the IHS clinic directed Kathleen to take him
12 home.
- 13
14 22. At about 6:30 p.m. Kathleen called the IHS clinic and reported that Jay was having a
15 seizure. She called back shortly thereafter to report that Jay was not breathing. An
16 ambulance was called, and Jay arrived via ambulance at the IHS clinic at about 7:45 p.m.
17 in full cardiac arrest. He was pronounced dead at about 9:06 p.m.
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19 23. IHS health care providers were negligent and violated the standard of care in failing to
20 properly diagnose and properly treat Jay's condition upon arrival at the IHS clinic on
21 June 15, 2005, and unreasonably delayed assessing and treating him. The failure to asses
22 and treat Jay in a timely manner caused his condition to deteriorate and exacerbated his
23 symptoms.
- 24
25 24. IHS health care providers were negligent and violated the standard of care in failing to
26 properly diagnose and properly treat Jay's condition at the IHS clinic on April 26, 2006,
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1 and unreasonably delayed assessing and treating him. The failure to asses and treat Jay in
2 a timely manner caused his condition to deteriorate and eventually caused his death.

3 25. As a direct and proximate result of each of the acts and omissions of the IHS health care
4 providers alleged in this Complaint, Jay suffered severe injuries resulting in his disability
5 and his death. Plaintiffs should receive lawful damages under Montana's survival statute,
6 MCA § 27-1-501, and wrongful death statute, MCA § 27-1-513, as follows:
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- 9 A. For the disability and wrongful death of Jay Thomas Allen and the loss of
10 economic and family support, companionship, affection, society, consortium,
11 comfort and services he provided to his family;
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- 13 B. For Jay's mental anguish, pain and suffering before he died;
- 14 C. For Jay's loss of income and permanent impairment of earning capacity;
- 15 D. For Jay's funeral and burial costs; and
- 16 E. For Jay's care and medical expenses before he died.
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19 **WHEREFORE**, Plaintiffs demand judgment against the Defendant as follows:

- 20 1. For judgment in such amounts as shall be proven at the time of trial.
- 21 2. For an award of attorney's fees and costs as provided by any applicable provision
22 of law.
- 23 3. For such other and further relief as the Court deems just and equitable.

24 DATED this 31st day of March, 2008.

25

26 By: /s/ Timothy M. Bechtold
27 Timothy M. Bechtold
28 BECHTOLD LAW FIRM, PLLC